IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

C.W.P. No:835 of 2005

Date of decision:5.12.2006

Nagesh Mahajan **Petitioner**

Versus

Secretary Town & Country Planning **Respondents.**

Coram

The Hon'ble Mr. Justice Deepak Gupta, Judge.

The Hon'ble Mr.S.S.Thakur, Judge.

Whether approved for reporting?[1]

For the Petitioner: Mr.B.C.Negi, Advocate

For the Respondents:Mr.M.S.Chandel, Advocate Geneneral with Mr.R.M.Bisht, Deputy Advocate General.

Deepak Gupta, J.

This writ petition is directed against the order of the State Government purportedly passed in exercise of its powers under Section 33 of the Town and Country Planning Act, 1977, dated 23.7.2005.

The brief facts necessary for the decision of the case are that the Under Secretary, Town and Country Planning, exercising powers of the Secretary, granted permission to the petitioner to raise a temporary structure in the following terms:-

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[1] ***Whether the reporters of the local papers may be allowed to see the Judgment?***

> "Therefore, this appeal is allowed to the extent that the appellant is allowed to raise temporary structure over the impugned land. However, the Department will ensure that the temporary structures which are raised are aesthetically good-looking and do not become an eyesore. The appeal is accordingly allowed."

Thereafter on 23rd July, 2005 the Secretary, Town and Country Planning, exercising powers of the State Government, passed the impugned order in exercise of powers vested in it under Section 33 of the Act and suspended the order dated 15.7.2005 passed by the Appellate Authority. It also directed that the parties to the appeal shall be heard in the matter. The petitioner thereafter approached this court and this court issued an ad interim stay order on 31.8.2005 whereby the order dated 23.7.2005 was stayed till further orders. We find from the order dated 23.7.2005 that the petitioner has a right to be heard in the matter and the revision has not been finally disposed of.

Mr.B.C.Negi, Advocate, has strenuously contended before us that the order dated 23.7.2005 is without jurisdiction since it has been passed after the period of twelve months prescribed under Section 33 of the Act. We are not going into this question at this stage because we feel that the petitioner can raise this objection, and all other objections, before the State Government.

We, therefore, dispose of this petition by directing that the petitioner shall appear before the Secretary, Town and Country

Planning (exercising the powers of the State Government under Section 33 of the Town and Country Planning Act, 1977) on 19th December, 2006 and the Secretary, Town and Country Planning shall endeavor to dispose of the revision as early as possible and in any event not later than 31st January, 2007. In the meantime, the order dated 23.7.2005 shall remain suspended till the disposal of the revision. The writ petition stands disposed of in the aforesaid terms.

CMP No. 1651 of 2005

In view of the disposal of the main petition this application also stands disposed of.

(Deepak Gupta), J.

December 5, 2006(K) (S.S.Thakur), J.